

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

**DAVID GARNER,**

# Petitioner

**V.**

**WARDEN, FCI SCHUYLKILL,**

## Respondent

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**CIVIL NO. 1:15-cv-0130**

**(Judge Rambo)**

**(Magistrate Judge Carlson)**

# MEMORANDUM

Before the court is a report and recommendation of the magistrate judge to whom this matter was referred in which he recommends that David Garner's petition for writ of habeas corpus filed pursuant to 28 U.S.C. § 2241 be dismissed or transferred. Garner has filed objections to the report and recommendation.

The petition raises a claim challenging Garner’s sentence. Garner claims his sentence was enhanced based upon a prior conviction. The magistrate judge recommended dismissal of the petition for two reasons: (1) that the proper petition to address the sentencing issue was by a motion pursuant to 28 U.S.C. § 2255; or (2) that the petition be transferred to the original sentencing court (i.e. the Northern District of Ohio) pursuant to 28 U.S.C. § 1404.

Garner only objects to the recommendation that the petition be dismissed without prejudice. He does not address the recommendation regarding a transfer of the petition to the proper venue.

Because the prerequisites for a transfer to the Northern District of Ohio have been satisfied under 28 U.S.C. § 1404,<sup>1</sup> the court will adopt that recommendation. An appropriate order will be issued.

s/Sylvia H. Rambo  
United States District Judge

Dated: February 10, 2015.

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<sup>1</sup>Convenience of parties, interest of justice, action could have originally been brought in the Northern District of Ohio.